

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the Matter Of:

TS Investment Corp.
Village Fuel Stop, Inc.

Complaint No. R4-2013-0009

For

Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. TS Investment Corp. and Village Fuel Stop, Inc. (collectively, Discharger) are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board or Regional Board) may impose administrative civil liability pursuant to Water Code section 13385.
2. Unless waived, a hearing on this matter will be held before the Los Angeles Water Board, or a panel of Los Angeles Water Board members, within 90 days following issuance of this Complaint. The Discharger or its representative(s) will have an opportunity to address and contest the allegations in this Complaint and the proposed imposition of administrative civil liability.
3. At the hearing, the Los Angeles Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

BACKGROUND

Castaic Truck Stop is a commercial fuel truck stop and plaza that consists of a two-story retail store and restaurant building located at 31611 North Castaic Road, Castaic, California 91384-3939 (hereinafter Site). TS Investment Corp. was the owner of the underground storage tanks (UST), and Village Fuel Stop Inc. was the operator of the USTs at the Site.

4. From approximately 1996 to 2007, Village Fuel Stop Inc. operated five 20,000-gallon steel USTs at the Site. All five USTs were excavated and removed from the Site in 2007. From January through April 2007 a facility upgrade occurred at the Site where five new 25,000-gallon USTs were installed. These new USTs are connected via manifolds and contain Ultra Low Sulfur Diesel (ULSD) fuel.
5. On October 8, 2010, the Regional Board staff was notified by the California Emergency Management Agency and later by the Los Angeles County Fire Department (LACFD) that a release of ULSD fuel from Tank No. 4's dispensing

line occurred at 11:20 AM. The exact volume of ULSD released is unknown, but was estimated to range from 622 gallons, based on an investigation performed by Village Fuel Stop Inc.'s consultant HerSchy Environmental, Inc. (HerSchy), to 1,500 gallons, based on preliminary reports from the LACFD. The release was caused when a ULSD dispensing line became over-pressurized and erupted. The ULSD release overflowed a bermed area and flowed into the adjacent storm drains, to Violin Canyon Channel thence to Castaic Creek, a water of the state and the U.S. (see Figure 1). Violin Canyon Channel and Castaic Creek are both tributaries to the Santa Clara River, the largest river system remaining in a relatively undeveloped area in southern California.

6. On October 18, 2010, the Regional Board issued an Order To Take Corrective Action requiring Village Fuel Stop Inc. to: (a) submit a Workplan To Conduct Offsite Assessment, (b) conduct corrective action and (c) submit an Interim Remedial Action Plan by November 18, 2010. This Order was not fully complied with.

On March 18, 2011 the Regional Board issued an Order that required Village Fuel Stop Inc. to submit an Offsite Assessment Report detailing the results of the investigation along Castaic Creek. The investigation found that residual concentrations of up to 8 mg/kg of ULSD were detected in soil. Groundwater samples collected and analyzed during the same period found diesel at concentrations of up to 380 µg/L and ethanol at a concentration of 63 µg/L, indicating residual contamination remained.

7. Site remediation efforts have primarily consisted of free product removal and emergency response soil removal along Violin Channel and Castaic Creek. Based on the Discharger's remedial activity reports, a total of 2,300 tons of contaminated soil were removed from offsite areas as part of the Discharger's mitigation measures. Stockpiled soil was sampled and later disposed at Chiquita Canyon Landfill. An estimated 622 to 1,500 gallons of diesel was recovered and disposed via a water tank, although the ULSD recovered by the vacuum truck was never quantified because of a dispute between Village Fuel Stop, Inc., Patriot Environmental, and its subcontractor, Rain For Rent, Inc.
8. On July 18, 2011, the Regional Board issued a second Order To Take Corrective Action after acknowledging receipt of the: (a) Stockpile Sampling Report dated May 5, 2011, (b) Creek Sampling Assessment Report dated May 9, and May 26, 2011, and (c) Interim Remedial Action Plan For Shallow Soil Remediation (IRAP) dated May 12, 2011 and 2Q11 Quarterly Monitoring Report (Monitoring Report)" dated June 15, 2011. The Order To Take Corrective Action required Village Fuel Stop Inc. to submit a revised IRAP. These reports pertain to a prior release at Village Fuel Stop, Inc. No further investigations related to the stockpiled soil and creek sampling assessments were required.

ALLEGATIONS

9. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to waters of the U.S. except in compliance with a National Pollutant Discharge Elimination System (NPDES) Permit. TS Investment Corp. and Village Fuel Stop, Inc. are alleged to have discharged ULSD into Violin Channel and Castaic Creek, tributaries of the Santa Clara River and waters of the U.S., on October 8, 2010 without an NPDES permit, in violation of Section 301 of the Clean Water Act and section 13376 of the Water Code.
10. Pursuant to Water Code section 13385, subdivision (a)(1), a discharger is subject to civil liability for violating Water Code section 13376. Pursuant to Water Code section 13385, subdivision (a)(5), a discharger is subject to civil liability for violating Section 301 of the Clean Water Act.
11. Pursuant to Water Code section 13385, subdivision (c), civil liability may be imposed administratively by the Regional Board in an amount not to exceed the sum of both of the following:
 - (a) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and
 - (b) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
12. Water Code section 13385, subdivision (e) specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13385. The Water Quality Enforcement Policy (Enforcement Policy), adopted by the State Water Resources Control Board on November 19, 2009 and approved by the Office of Administrative Law, became effective on May 20, 2010. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e). The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
13. The required factors have been considered for the discharge violation alleged herein using the methodology in the Enforcement Policy, as explained in detail in Attachment A.

MAXIMUM LIABILITY

Pursuant to Water Code section 13385, the maximum administrative civil liability penalty which can be imposed by the Regional Board for the ULSD release is ten thousand dollars (\$10,000) for each day in which the violation occurs. This Complaint alleges the discharge took place on October 8, 2010. Therefore, the maximum penalty is \$10,000.


PROPOSED LIABILITY

Based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Regional Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$10,000, as described further in Attachment A.

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Dated this 10th day of May, 2013.



PAULA RASMUSSEN
Assistant Executive Officer

ATTACHMENT A

Calculation of Liability

The State Water Resources Control Board's Water Quality Enforcement Policy (amended November, 2009)¹ establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code section 13385(e). The liability methodology spreadsheet, Attachment B, is incorporated herein and made a part of this Administrative Civil Liability Complaint (Complaint) by this reference. It presents the administrative civil liability derived from the use of the penalty methodology in the Enforcement Policy.

1. Step 1 – Potential for Harm for Discharge Violations

a. Factor 1: Harm or Potential for Harm to Beneficial Uses (4)

This score evaluates direct or indirect harm or potential for harm from the violation.

Spill Path – Affected Water Bodies

From the discharge location, ULSD fuel flowed into a storm drain and discharged to the unlined portion of Castaic Creek, a tributary to, and approximately 1,000 feet from, the Santa Clara River.

Beneficial Uses

The Santa Clara River is the largest river system remaining in a relatively undeveloped state in southern California. Its headwaters are located in the San Gabriel Mountains near the Community of Acton in Los Angeles County. It flows westerly for approximately 84 miles through Ventura County to its outlet into the Pacific Ocean, near the City of San Buenaventura. Major tributaries include Castaic Creek and San Francisquito Creek in Los Angeles County, and the Sespe, Piru and Santa Paula Creeks in Ventura County. Approximately 60 percent of the watershed is located within Ventura County. About 90 percent of the watershed is located in mountainous terrain, with the remainder consisting of the relatively flat floodplain areas of the Oxnard Plain, Santa Clarita Valley, Castaic Valley, the Santa Clara River Valley, and the floors of the larger canyons including the upper Soledad, lower Sand, Mint, Bouquet, Placerita, San Francisquito, Piru, Santa Paula, and Sespe Canyons.

¹ The Enforcement Policy may be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The existing beneficial uses of the Santa Clara River include:

1. Industrial Service Supply(IND)
2. Navigation (NAV)
3. Water Contact Recreation (REC1)
4. Non-contact Water Recreation (REC2)
5. Commercial and Sport Fishing (COMM)
6. Estuarine Habitat (EST)
7. Wildlife Habitat (WILD)
8. Rare, Threatened, or Endangered Species (RARE)
9. Migration of Aquatic Organisms (MIGR)
10. Spawning, Reproduction, and/or Early Development (SPWN)
11. Shellfish Harvesting (SHELL)
12. Wetland Habitat (WET)

Harm or Potential for Harm

According to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1910.1200), ULSD is a hazardous substance. ULSD is a flammable, clear liquid fuel oil with a strong odor. ULSD is composed of naphthalene, 1,2,4-Trimethylbenzene, n-Nonane, xylenes, and sulfur. Naphthalene is a chemical known to the State of California to cause cancer and is toxic to algae. ULSD is toxic to soil micro-organisms and aquatic species and wildlife, such as birds. ULSD is toxic to plants and animals, including humans who come into contact with it. ULSD floats on water and affects animals such as birds, marine mammals and shellfish that spend their time on or at the surface of the water or the surrounding land. The ULSD can coat the feathers of birds, hampering their ability to fly, float and stay warm.

According to the Regional Board Inspection Report, dated October 12, 2010, most of the ULSD spill, estimated between 650 and 1,500 gallons, was recovered from the lined portion of Violin Creek. However, ULSD contamination was observed in the soil and the groundwater below Castaic Creek had a distinct diesel odor. The Inspection Report also indicated there was a potential impact to aquatic wildlife, including the three spined unarmored stickle back fish and a potential impact to vegetation.

A Regional Board Order issued on March 18, 2011 required Village Fuel Stop, Inc. to submit an Offsite Assessment Report detailing the results of the offsite assessment along Castaic Creek. In April 2011, HerSchy collected soil samples along Castaic Creek. Sampling began at the end of the concrete channel to approximately 450 feet from the base of the concreted channel. The twelve composite soil samples collected showed concentrations of total

petroleum hydrocarbons as diesel (TPH_D) ranging from 1,200 mg/kg to 3.8 mg/kg. The contaminants were not likely to naturally attenuate in the contaminated soil necessitating its excavation from Violin Channel. HerSchy disposed of 111 truckloads of excavated contaminated soil, which amounts to 2,300 tons, at the Chiquita Canyon Landfill in Castaic. HerSchy indicated in its report dated January 11, 2013 that it rained heavily on the day of the release. Groundwater samples collected contained TPH_D and ethanol at concentrations of 380 µg/L and 63 µg/L, respectively. Furthermore, surface and groundwater in the proximity of the site may be interconnected since the groundwater is very shallow and the site adjacent to a creek. Therefore, a surface spill may very well impact both surface water and groundwater. An above moderate threat to these beneficial uses is being assigned as impacts to aquatic wildlife would likely be substantial from the ULSD discharge into Violin Channel and the impacts are not likely to attenuate without appreciable or chronic effects. Therefore, a score of 4 was assigned to Factor 1 of the penalty calculation.

b. Factor 2: Physical Chemical, Biological or Thermal Characteristics of the Discharge (4)

A score of 4 was assigned to Factor 2 of the penalty calculation as the discharged material poses an above-moderate risk or a direct threat to potential receptors. According to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1910.1200), ULSD is a hazardous substance. ULSD is a flammable, clear liquid fuel oil with a strong odor. ULSD is composed of naphthalene, 1,2,4-Trimethylbenzene, n-Nonane, xylenes, and sulfur. Naphthalene is a chemical known to the State of California to cause cancer and is toxic to algae. Any exposure to ULSD may have potential environmental effects that include toxicity to aquatic organisms and may cause long-term adverse effects in the aquatic environment.

c. Factor 3: Susceptibility to Cleanup and Abatement (0)

Because more than 50% of the discharge was actually cleaned up, a score of 0 was assigned to Factor 3 of the penalty calculation.

Based on the above determinations, the **Potential for Harm final score** for the violations is **8 (eight)**.

$$\begin{aligned} & (\text{Factor 1}) + (\text{Factor 2}) + (\text{Factor 3}) \\ & = 4 + 4 + 0 \\ & = 8 \text{ Potential for Harm} \end{aligned}$$

2. Step 2 – Assessment for Discharge Violations

Water Code § 13385(c) states that civil liability may be imposed administratively by a regional board in an amount not to exceed the sum of ten thousand dollars (\$10,000) for each day in which the violation occurs and \$10 for each gallon discharged but not cleaned up that exceeds 1,000 gallons. Since the exact volume discharged is unknown and is estimated, to be 622 gallons, (which is less than 1,000 gallons), liability is proposed on a per day basis only.

Per Day Assessment

To calculate the initial liability amount on a per day basis, a **Per Day Factor** is determined from Table 2 of the Enforcement Policy (page 15) by using the **Potential for Harm score** (step 1) and the extent of **Deviation from Requirements** (minor, moderate, or major) of the violation.

a. Deviation from Requirement (Major)

The deviation from requirement is **Major**. The discharge of pollutants to the Violin Channel and Castaic Creek occurred without authorization under an NPDES permit. Therefore, the Discharger is assessed a major deviation from requirements where the requirement has been rendered ineffective in its essential functions.

b. Per Day Factor (0.600)

A Per Day Factor of 0.600 is selected from Table 2 of the Enforcement Policy.

Using the information above, the **Initial Liability assessed per day is calculated to be \$6,000:**

(Per Day Factor) x (Days subject to penalty) x (Maximum per day penalty amount)

= (0.600) x (1 day) x (\$10,000 / day)

= **\$6,000 Initial Liability (Per Day Assessment)**

3. Step 3 – Per Day Assessments for Non-Discharge Violations

Not applicable.

4. Step 4 – Adjustment Factors

Staff considered certain Discharger Conduct Factors to calculate adjustments to the amount of the Initial Amount of the Administrative Civil Liability as follows:

a. Culpability (1.30)

The Enforcement Policy suggests a culpability multiplier ranging from 0.5 to 1.5, with a lower multiplier for accidental incidents and a higher multiplier for intentional or negligent behaviors. In this case, a multiplier of **1.30** was selected. The unauthorized release from UST Number 4 was caused by a system wide pressure build up in 5 linked USTs. The operation and design of USTs should not result in any release of fuel from USTs. Moreover, the Discharger failed to contain the ULSD release on site, thereby permitting the discharge to the waters of the US.

b. Cleanup and Cooperation (1.0)

To adjust for the extent that the Discharger voluntarily cooperated in returning to compliance and correcting environmental damage, the Enforcement Policy suggests a multiplier ranging from 0.75 to 1.5, with a lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent. In this case, a multiplier of 1.0 was chosen because it is the expectation of any reasonable UST facility to clean-up after the discharge after an explosion. Therefore, no discount should be applied to cleanup actions that should have been conducted as a result of this discharge.

c. History of Violations (1.1)

The Discharger has a history of non-compliance with Regional Board directives and has had previous releases of gasoline and additive product from its UST system. In October 2006, a release occurred at the Site to which mitigation measures are ongoing and continue to be overseen by regulatory agencies.

The Enforcement Policy suggests a minimum multiplier of 1.1 for a Respondent with a history of repeat violations. Therefore, a multiplier of **1.1** was chosen.

The initial base liability per day is multiplied by the above factors to determine the revised liability amount.

Revised Per Day Assessment

(Initial Liability) x (Culpability) x (Cleanup and Cooperation) x (History of Violations)

= (\$6,000) x (1.30) x (1.0) x (1.1)

= \$8,580 Revised Liability Per Day Assessment

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by adding the revised liability amounts per gallon and per day. The **Total Base Liability is \$8,580.**

(Revised Liability Per Day Assessment) + (Revised Liability Per Gallon)

= \$8,580 + \$0 (Not factored in)

= **\$8,580 Total Base Liability**

6. Step 6 – Ability to Pay and Ability to Continue in Business

If there is sufficient financial information to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

Business databases, such as Manta.com, indicate that this company has annual revenue of \$2.5 million to \$5 million. Staff believes the Total Base Liability Amount will not affect the Dischargers' ability to continue in business. Accordingly, the Total Base Liability Amount was not adjusted.

7. Step 7 – Other Factors as Justice May Require

If the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. In addition, the costs of investigation and enforcement are "other factors as justice may require," and should be added to the liability amount.

Staff costs incurred by the Regional Board to date are \$6,000. This amount was added to the Total Base Liability Amount, bringing the liability adjusted Total Base Liability Amount to **\$14,580.**

(Total Base Liability) + (Staff Costs)

= \$8,580 + \$6,000

= **\$14,580 adjusted Total Base Liability**

8. Step 8 – Economic Benefit

The Economic Benefit Amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy states that the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. The Dischargers could have more effectively monitored the pressure build-up in the UST product lines, and likely have avoided the subsequent release. Therefore, the Dischargers did experience a savings or monetary gain for failing to effectively monitor the pressure in the UST lines. However, Regional Board staff lack the data to calculate this benefit, but Regional Board staff estimate that the economic benefit is less than the amount proposed in the Complaint.

9. Step 9 – Maximum and Minimum Liability Amounts

The **Minimum Liability Amount** is \$0. The Regional Board is not required to assess any minimum liability amount for this violation. However, as mentioned in Step 8, the Enforcement Policy states that when making monetary assessments, the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount. However, there was no economic benefit that can be calculated.

The **Maximum Liability Amount** is \$10,000. This is determined by multiplying the 1 day by the maximum daily penalty of \$10,000.

10. Step 10 – Final Liability Amount

The Total Base Liability amount exceeds the statutory maximum. In accordance with the above methodology, Staff recommends a **Final Liability Amount of \$10,000**. This Final Liability Amount is within the statutory minimum and maximum amounts.

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2013-0009

By signing this waiver, I affirm and acknowledge the following:

We are duly authorized to represent TS Investment Corp. and Village Fuel Stop, Inc. in the matter of TS Investment Corp. and Village Fuel Stop, Inc. (hereinafter "Respondents") in connection with Administrative Civil Liability Complaint No. R4-2013-0009 (hereinafter the "Complaint"). We are informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person or persons who has/have been issued a complaint may waive the/their right to a hearing."

☐ **(OPTION 1: Check here if the Respondents waive the hearing requirement and will pay the recommended liability.)**

- a. We hereby waive any right the Respondents may have to a hearing before the Regional Water Board.
- b. We certify that the Respondents will remit payment for the civil liability imposed in the amount of **\$10,000** by check that references "ACL Complaint No. R4-2013-0009" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- c. We understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Respondents having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. We understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Respondents to further enforcement, including additional civil liability.

Complaint No. R4-2013-0009
TS Investment Corp.
Village Fuel Stop, Inc.

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May 10, 2013

- ☐ **(OPTION 2: Check here if the Respondents waive the 90-day hearing requirement in order to engage in settlement discussions.)** We hereby waive any right the Respondents may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but we reserve the ability to request a hearing in the future. We certify that the Respondents will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Respondents request that the Regional Water Board delay the hearing so that the Respondents and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(Print Name and Title)
For TS Investment Corp.

Signature

Date

(Print Name and Title)
For Village Fuel Stop, Inc.

Signature

Date

HEARING PANEL OF THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600

ACLC No. R4-2013-0009

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES

TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND
PROPOSE RECOMMENDATIONS

<u>DISCHARGERS</u>	<u>DISCHARGE LOCATION</u>	<u>RECEIVING WATER</u>
TS INVESTMENT CORP. VILLAGE FUEL STOP, INC.	Castaic Truck Stop 31611 NORTH CASTAIC ROAD, CASTAIC, CALIFORNIA 91384	SANTA CLARA RIVER

Administrative Civil Liability Complaint ("ACLC") No. R4-2013-0009 alleges that TS Investment Corp. and Village Fuel Stop, Inc. violated California Water Code section 13385 by discharging diesel fuel into the waters of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$10,000 be assessed against TS Investment Corp. and Village Fuel Stop, Inc. for this violation.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three members of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLC.

This notice sets forth procedures to be used by hearing panels of the Regional Board and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: August 8, 2013
Time: 9:00 AM
Place: TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC, related documents, proposed order, comments received, and other information about the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by calling the Los Angeles Regional Board at (213) 576-6600.

The entire file will become a part of the administrative record of this proceeding and staff will identify the location of individual documents that are specifically referenced during the hearing. However, the entire file might not be available at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Prosecution Team during business hours, not later than **5:00 PM on July 19, 2013**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 et seq. of title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. TS Investment Corp.
2. Village Fuel Stop, Inc.
3. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below so that it is received no later than **5:00 PM on June 24, 2013**. All requests for a designation as a party shall include the name, phone number, and e-mail address of the person who is designated to receive notices about this proceeding. The request shall also include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement

explaining why the party or parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Mr. Dixon Oriola, Senior Engineering Geologist Specialist of the Underground Storage Tank Section. Mr. David Boyers, Senior Staff Counsel, and Ms. Vanessa Young, Staff Counsel from the State Water Resources Control Board's Office of Enforcement will advise the Prosecution Team prior to and at the panel hearing. Mr. David Boyers and Ms. Vanessa Young are currently advising the Regional Board in other unrelated matters, but neither Ms. Vanessa Young nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Mr. Dixon Oriola (Case Manager)
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6747
Dixon.Oriola@waterboards.ca.gov

Ms. Vanessa Young
State Water Resources Control Board
Office of Enforcement, 16th Floor
1001 I Street, Sacramento, CA
(916) 327-8622
Vanessa.Young@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **June 19, 2013**, the Prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

TS Investment Corp. and Village Fuel Stop, Inc. are required to submit:

- 1) Any additional documents or evidence the Party want(s) the Hearing Panel to consider,
- 2) A summary of any testimony the Party intend(s) to present,
- 3) The name of each witness, if any, whom the Party intends to call at the hearing, and
- 4) A statement regarding how much time the Party needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00 PM on July 10, 2013**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Regional Board hearing. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **July 29, 2013**.

B. Submittals By Interested Persons.

Persons who are not designated as parties above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by **5:00 PM on July 10, 2013**. If possible, please submit written comments in Word format electronically to Dixon.Oriola@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the

extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 PM on July 10, 2013** to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section IV and Section VI, above, or it may be excluded from consideration by the Hearing Panel. The Hearing Panel will include in the administrative record written transcripts of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING PANEL

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Panel Advisors.

The Hearing Panel will be advised before and during the hearing by Executive Officer Samuel Unger, and Legal Advisor, Ms. Jennifer Fordyce, Staff Counsel for the State Water Resources Control Board. While Mr. Unger exercises general oversight over the staff's enforcement activities, neither he nor Ms. Jennifer Fordyce have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by **5:00 PM on July 10, 2013**.

Ms. Jennifer Fordyce
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 324-6682
Jennifer.Fordyce@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by 5:00 PM on July 10, 2013 if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. APPLICABILITY OF NOTICE

The Executive Officer has directed the use of this standard notice in an order dated March 5, 2008. If you have any questions about this Notice of Public Hearing, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: May 10, 2013

Administrative Civil Liability

Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer or Chief Prosecutor. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;
 - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;

9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.